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Attorneys for Defendant KEVIN VU,
an individual, doing business as
THE BOILING CRAB

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

SINHDARELLA, INC., a California
Corporation,

No. C 07 04353 JCS

Plaintiff,

ANSWER OF DEFENDANT KEVIN VU

v.

KEVIN VU, an individual, d/b/a
THE BOILINGCRAB; and DOES 1 through 10

Defendant.

Defendant, KEVIN VU ("VU" or "Defendant") hereby responds to the Complaint
of Plaintiff SINHDARELLA, INC. ("Sinhdarella" or "Plaintiff") as follows:

Except as hereinafter expressly admitted, qualified or otherwise admitted,
Defendants specifically deny each and every allegation, statement, matter and thing contained
in the Complaint.

Jurisdiction

1. In response to this paragraph of the Complaint, Defendant is without
sufficient knowledge or information to form a belief as to the truth of the allegations in this

1 paragraph, and on that basis denies each and every allegation in this paragraph.

2 **Venue**

3 2. In response to this paragraph of the Complaint, Defendant admits that he
4 does business within this district, but denies the remaining allegations in this paragraph.

5 **Intradistrict Assignment**

6 3. In response to this paragraph of the Complaint, Defendant admit each and
7 every allegation of this paragraph.

8 **Parties**

9 4. In response to this paragraph of the Complaint, Defendant is without
10 sufficient knowledge or information to form a belief as to the truth of the allegations in this
11 paragraph, and on that basis denies each and every allegation in this paragraph.

12 5. In response to this paragraph of the Complaint, Defendant admits that he is
13 operating a restaurant by the name of The Boiling Crab and that he resides in San Jose.
14 Defendant denies the remaining allegations in this paragraph.

15 6. In response to this paragraph of the Complaint, Defendant is without
16 sufficient knowledge or information to form a belief as to the truth of the allegations in this
17 paragraph, and on that basis denies each and every allegation in this paragraph.

18 7. In response to this paragraph of the Complaint, Defendant is without
19 sufficient knowledge or information to form a belief as to the truth of the allegations in this
20 paragraph, and on that basis denies each and every allegation in this paragraph.

21 **Factual Allegations**

22 8. In response to this paragraph of the Complaint, Defendant is without
23 sufficient knowledge or information to form a belief as to the truth of the allegations in this
24 paragraph, and on that basis denies each and every allegation in this paragraph.

25 9. In response to this paragraph of the Complaint, Defendant is without
26 sufficient knowledge or information to form a belief as to the truth of the allegations in this

1 paragraph, and on that basis denies each and every allegation in this paragraph.

2 10. In response to this paragraph of the Complaint, Defendant is without
3 sufficient knowledge or information to form a belief as to the truth of the allegations in this
4 paragraph, and on that basis denies each and every allegation in this paragraph.

5 11. In response to this paragraph of the Complaint, Defendant is without
6 sufficient knowledge or information to form a belief as to the truth of the allegations in this
7 paragraph, and on that basis denies each and every allegation in this paragraph.

8 12. In response to this paragraph of the Complaint, Defendant is without
9 sufficient knowledge or information to form a belief as to the truth of the allegations in this
10 paragraph, and on that basis denies each and every allegation in this paragraph.

11 13. In response to this paragraph of the Complaint, Defendant is without
12 sufficient knowledge or information to form a belief as to the truth of the allegations in this
13 paragraph, and on that basis denies each and every allegation in this paragraph.

14 14. In response to this paragraph of the Complaint, Defendant is without
15 sufficient knowledge or information to form a belief as to the truth of the allegations in this
16 paragraph, and on that basis denies each and every allegation in this paragraph.

17 15. In response to this paragraph of the Complaint, Defendant is without
18 sufficient knowledge or information to form a belief as to the truth of the allegations in this
19 paragraph, and on that basis denies each and every allegation in this paragraph.

20 **Allegations of Federal Registration**

21 16. In response to this paragraph of the Complaint, Defendant is without
22 sufficient knowledge or information to form a belief as to the truth of the allegations in this
23 paragraph, and on that basis denies each and every allegation in this paragraph.

24 17. In response to this paragraph of the Complaint, Defendant is without
25 sufficient knowledge or information to form a belief as to the truth of the allegations in this
26 paragraph, and on that basis denies each and every allegation in this paragraph.

Infringement Allegations

18. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

19. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

20. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

21. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

22. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

23. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

Allegations Regarding Demands to Stop

24. In response to this paragraph of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that basis denies each and every allegation in this paragraph.

25. In response to this paragraph of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that basis denies each and every allegation in this paragraph.

26. In response to this paragraph of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that basis denies each and every allegation in this paragraph.

27. In response to this paragraph of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that basis denies each and every allegation in this paragraph.

First Claim for Relief

28. In response to this paragraph of the Complaint, Defendant incorporates by reference his responses to the allegations of paragraphs 1 through 27, inclusive of the Complaint.

29. In response to this paragraph of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that basis denies each and every allegation in this paragraph.

30. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

31. In response to this paragraph of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of whether Sinhdarella consented to or authorized Defendant's adoption or commercial use of the trademark and on that basis denies this allegation. Defendant denies the remaining allegations of this paragraph.

32. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

33. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

34. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

35. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

36. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

37. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

Second Claim for Relief

38. In response to this paragraph of the Complaint, Defendant incorporates by reference his responses to the allegations of paragraphs 1 through 37, inclusive of the Complaint.

39. In response to this paragraph of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that basis denies each and every allegation in this paragraph.

40. In response to this paragraph of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and on that basis denies each and every allegation in this paragraph.

41. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

42. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

43. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

44. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

45. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

46. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

Third Claim for Relief

47. In response to this paragraph of the Complaint, Defendant incorporates by reference his responses to the allegations of paragraphs 1 through 46, inclusive of the Complaint.

48. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

49. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

50. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

Fourth Claim for Relief

51. In response to this paragraph of the Complaint, Defendant incorporates by reference his responses to the allegations of paragraphs 1 through 50, inclusive of the Complaint.

52. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

53. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

Fifth Claim for Relief

54. In response to this paragraph of the Complaint, Defendant incorporates by reference his responses to the allegations of paragraphs 1 through 53, inclusive of the Complaint.

55. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

56. In response to this paragraph of the Complaint, Defendant denies each and every allegation in this paragraph.

57. In response to this paragraph of the Complaint, Defendant denies each and every allegation I n this paragraph.

AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative defenses based on his current

1 knowledge and information and in order to avoid waiver. Defendant reserves the right to
2 withdraw any of these affirmative defenses to assert further affirmative defenses as
3 information becomes available.

4 FIRST AFFIRMATIVE DEFENSE

5 Plaintiff's complaint fails to state a claim upon which relief may be granted.

6 SECOND AFFIRMATIVE DEFENSE

7 Plaintiff's claims for infringement are barred because the registration is invalid and
8 unenforceable.

9 THIRD AFFIRMATIVE DEFENSE

10 Plaintiff's alleged mark is merely descriptive of the goods and not entitled to
11 trademark protection.

12 FOURTH AFFIRMATIVE DEFENSE

13 All or part of plaintiff's claims fail to state a cause of action because the purported
14 marks have not acquired distinctiveness (secondary meaning) and/or are not inherently
15 distinctive.

16 FIFTH AFFIRMATIVE DEFENSE

17 Plaintiff's claim for trademark infringement and Lanham Act violations are barred
18 because the allegedly infringing words were not used as a trademark, but fairly and in good
19 faith to describe a product, and Plaintiff is not entitled to appropriate a generic or descriptive
20 term for its exclusive use.

21 SIXTH AFFIRMATIVE DEFENSE

22 Plaintiff's claims are barred because Plaintiff cannot demonstrate any likelihood that
23 the public will be confused or misled as to the source of Defendant's goods or that
24 Defendant's goods are produced by, or endorsed by, Plaintiff.

25 SEVENTH AFFIRMATIVE DEFENSE

26 Plaintiff, through its failure to protect or enforce their trademark rights, has

1 abandoned all such rights.

2 EIGHTH AFFIRMATIVE DEFENSE

3 Plaintiff's claims are barred by the doctrine of fair use.

4 NINTH AFFIRMATIVE DEFENSE

5 Plaintiff's claims are barred because the purported trade dress does not qualify for
6 protection.

7 TENTH AFFIRMATIVE DEFENSE

8 Plaintiff's claims are barred because any alleged infringement was innocent and
9 wholly without knowledge by Defendant of any rights claimed by Plaintiff.

10 ELEVENTH AFFIRMATIVE DEFENSE

11 Any and all of the acts alleged by plaintiff were performed, if they were performed
12 at all, with lack of knowledge, lack of willful intent and without malice or ill-will.

13 TWELFH AFFIRMATIVE DEFENSE

14 Defendant alleges that plaintiff's claims are barred because plaintiff has not suffered
15 any damages as a result of the facts alleged in the Complaint.

16 THIRTEENTH AFFIRMATIVE DEFENSE

17 Defendant alleges they did not infringe any trademark and defendant's conduct, if
18 any, was not intended to, was not used to, and did not, in fact, cause confusion, mistake, or
19 deceit.

20 FOURTEENTH AFFIRMATIVE DEFENSE

21 Plaintiff's common law and state law claims are preempted by Federal law.

22 FIFTEENTH AFFIRMATIVE DEFENSE

23 Plaintiff's claims are barred by the applicable statutes of limitation.

24 SIXTEENTH AFFIRMATIVE DEFENSE

25 Plaintiff's claims are barred by the doctrine of laches.

26 SEVENTEENTH AFFIRMATIVE DEFENSE

1 Plaintiff's claims are barred or its recovery must be reduced for failure to mitigate
2 damages, if any.

3 EIGHTEENTH AFFIRMATIVE DEFENSE

4 Plaintiff's claims are barred by the doctrine of estoppel.

5 NINETEENTH AFFIRMATIVE DEFENSE

6 Plaintiff's claims are barred by the doctrine of acquiescence.

7 TWENTIETH AFFIRMATIVE DEFENSE

8 Plaintiff's claims are barred by the doctrine of waiver.

9 TWENTY-FIRST AFFIRMATIVE DEFENSE

10 Plaintiff's claims are barred by the doctrine of unclean hands.

11
12 WHEREFORE, Defendant pray as follows:

- 13 1. That Plaintiff takes nothing by reason of its Complaint;
14 2. That judgment be rendered in favor of Defendants;
15 3. That Defendant be awarded attorneys fees and costs incurred in defense of
16 this action as provided by any and all applicable laws and statutes; and
17 4. For such other relief as the Court deems just and proper.

18 DEFENDANTS DEMAND TRIAL BY JURY ON ALL ISSUES.

19
20 Respectfully submitted,

21 DATED: September 13, 2007

DLC LAW GROUP

22
23
24 By: 

Attorneys for Defendant KEVIN VU,
an individual, doing business as
THE BOILING CRAB